CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 01

CUSTOM Appeal No. 10791 of 2023

[Arising Out Of OIO-MUN-CUSTM-000-COM-14-23-24 Dated-20/09/2023 Passed By Commissioner of CUSTOMS-Mundra Customs]

JAI LIGHTING AND AUDIO EQUIPMENT **.....Appellant**
1964 Outram Lines Kingsway Camp
New Delhi, Delhi-111009

VERSUS

Commissioner of CUSTOMS-Mundra Customs **.....Respondent**
Office Of The Pr. Commissioner Of Customs,Custom House,
Mundra,Kutch,Mundra Port And Special Economic Zone,Mundra
KACHCHH, GUJARAT-370421

WITH

CUSTOM Appeal No. 10792 of 2023

[Arising Out Of OIO-MUN-CUSTM-000-COM-13-23-24 Dated- 18/09/2023 Passed By Commissioner of CUSTOMS-AHMEDABAD]

PRANSH ENTERPRISES **.....Appellant**
2085/18 2nd Floor Chah Indara Bhagirath Palace
Bajrang Bazar Chandni Chowk Delhi
New Delhi, Delhi-111006

VERSUS

Commissioner of CUSTOMS-Mundra Customs **.....Respondent**
Office Of The Pr. Commissioner Of Customs,Custom House,
Mundra,Kutch,Mundra Port And Special Economic Zone,Mundra
KACHCHH, GUJARAT-370421

AND

CUSTOM Appeal No. 10793 of 2023

[Arising Out Of OIO-MNU-CUSTOM-000-COM-10-23-24 Dated- 14/08/2023 Passed By Commissioner of CUSTOMS-AHMEDABAD]

DAIWIK ENTERPRISES **.....Appellant**
2085/18 2nd Floor Chah Indara Bhagirath Palace
Bajrang Bazar Chandni Chowk Delhi
New Delhi, Delhi
111006

VERSUS

Commissioner of CUSTOMS-Mundra Customs **.....Respondent**
Office Of The Pr. Commissioner Of Customs,Custom House,
Mundra,Kutch,Mundra Port And Special Economic Zone,Mundra
KACHCHH, GUJARAT-370421

APPEARANCE:
Shri. Dr. G K SARKAR, Advocate for the Appellant
Shri. Girish Nair, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA
HON'BLE MEMBER (TECHNICAL), MR. C.L. MAHAR

FINAL ORDER NO. 10852-10854/ 2024

DATE OF HEARING:14.03.2024
DATE OF DECISION: 12.04.2024

SOMESH ARORA

An intelligence was stated to have been developed by the Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad that a Delhi based company namely M/s. Zip Zap Exim Private Limited (IEC- 0516944169) (hereinafter referred to as "M/s.ZZEPL") in connivance with its domestic buyers/actual importers had established a trading unit in Special Economic Zone, Kandla (Gujarat) (hereinafter referred to as "KASEZ" for the sake of brevity) with a sole intent to bypass the normal Customs Channels and clear the imported goods into domestic area by resorting to gross undervaluation and thereby defrauding the government exchequer by evading the payment of higher customs duty. As per SEZ Rules, 2006, if a SEZ (trading) unit clears the goods into Domestic Tariff Area (hereinafter referred to as "DTA" for the sake of brevity), the sale proceeds should be in Foreign Exchange only but intelligence indicated that M/s. ZZEPL was clearing the goods against payment of Indian rupees only and thus they were not earning any foreign exchange. Intelligence further suggested that all dealings with foreign suppliers were being done by the domestic buyers/actual importers only and M/ s. ZZEPL was facilitating the domestic buyers in getting the goods cleared through their SEZ Unit by resorting to gross undervaluation for which they were charging commission.

2. M/s. ZZEPL was importing Knitted Polyester Fabrics under Customs Tariff Heading 6006 and various other Electrical Goods such as Mosquito Bats, LED Rechargeable Search Lights, Fancy Mini Torches, Small Rechargeable Batteries, Decorative Disco LED Par Lights, Decorative Disco Focus Lights, Laser Lights, LED Rope Lights, Led Christmas Lights etc., of assorted sizes etc. under Chapter 94 and 85 of Customs Tariff Heading and subsequently, clearing the same into DTA to various DTA importers. While importing the goods M/s. ZZEPL filed Bills of Entry with KASEZ authority for clearance of the goods from Mundra Port to their unit in KASEZ. Subsequently, M/ s. ZZEPL also filed DTA Bills of Entry in the name of

various domestic buyers and cleared the goods on payment of Customs Duty.

3. Accordingly, a Show Cause Notice No. GEN / A DJ /COMM 218/2021-Adjn O/o Cummr-Cus-Kandla dated 08.09.2021 was issued to Mis ZZEPL & others(hereinafter called ‘first S.C.N’). Under the said SCN, M/s. Jia Lighting and Audio Equipment (IEC: 0516952030) are also one of the noticees, as they are one of the domestic buyers of the goods imported by M/s ZZEPL.

4. Further, M/s. Jia Lighting and Audio Equipment had also imported and cleared similar goods I.e., "Decorative LED Par Light 54L" and "Decorative Disco LED Par Light Small through Mundra Port. Details of such imports are as under:-

TABLE-A

SL. No	Bill of Entry No & Date	Description of goods	Quantity (In Pieces)	Declared Price per Piece (In USD)	Declared Assessable value (In Rs.)
1.	8507039 dt. 10.02.2017	Decorative LED Par Light 54L	4532	1,288333	4,03,366/-
2.	8508332 dt. 10.02.2017	Decorative Disco LED Par Light Small	8120	0.811667	4,55,317/-
3.	8687768 dt. 27.02.2017	Decorative LED Par Light 54L	4532	1.29	4,01,158/-
Total					12,59,841/-

5. Consequent to the above it appeared to the department that M/s Jia Lighting and Audio Equipment, importer of "Decorative LED Par Light 54L and "Decorative Disco LED Par Light Small has also mis-declared/ undervalued the goods imported and cleared through Mundra port under the

above Bills of Entry. In continuation of the Show Cause Notice No. GEN/ADJ/COMM / 218/2021 Adjn O/o Cummr-Cus-Kandla dated 08.09.2021 issued to M/s. ZZEPL & others, for revision of the assessable value and customs duty thereon of the items of Bills of Entry as per Table-A of the SCN

6. Therefore, the value of Rs12,59,841/- (Rs. Twelve Lakh Fifty Nine Thousand Eight Hundred and Forty One Only) declared by M/s. Jia Lighting and Audio Equipment at the time of clearance of goods i.e. Fancy LED Strip Rope Light 50 Mtr ", was to be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and the same was required to be re-determined to Rs.8,64,81,379/- (Rs. Eight Crore Sixty Four Lakh Eighty One Thousand Three Hundred and Seventy Nine only) as per the Show Cause Notices Gen/Adj/ADC / 146/2022 - Adjn (read with corrigendum dated 11.02.2022) dated 09.02.2022 & Gen/Adj/ADC/153/2022-Adjn (read with corrigendum dated 20.03.2023) dated 14.02.2022, under Section 14 of the Customs Act, 1962 read with Rule 3, Rule 9 and Rule 10 of the CVR, 2007.

7. Further, as per the department M/s. Jia Lighting and Audio Equipment hatched the conspiracy to import "Decorative LED Par Light 54L and "Decorative Disco LED Par Light Small", by declaring lower values than the actual transaction values of the said goods to evade the Customs Duty, as indicated in ANNEXURE-A to Show Cause Notices Gen/Adj/ADC / 146/2022 - Adjn (read with corrigendum dated 11.02.2022) (hereinafter 'second S.C.N') dated 09.02.2022 & Gen / Adj / ADC / 153 / 2022 –Adjn dated 14.02.2022 (hereinafter 'third S.C.N') . The firm had as per the department indulged in

the activities relating to the said undervaluation and mis-declaration of actual price of said imports, which resulted in evasion of Customs duty as detailed in ANNEXURE-A to the said two SCNs i.e. 'second S.C.N and 'third S.C.N). All the aforesaid acts of omission and commission on the part of the importer have rendered the impugned imported goods liable for confiscation under Section 111(m) and 111(d) of the Customs Act, 1962. Further, the firm/person had consciously dealt with the said goods which they knew or had reasons to believe, were liable to confiscation under the Customs Act, 1962. Thus, as discussed at para above, M/s. Jia Lighting and Audio Equipment, had rendered themselves liable for penalty under the provisions of Section 112(a) & (b)/114A and 114AA of the Customs Act, 1962.

8. Therefore, Show Cause Notices Gen/Adj/ADC/146/2022-Adjn (read with corrigendum dated 11.02.2022) dated 09.02.2022 (second S.C.N) Gen/Adj/ADC/153/2022 l -Adjn (read with corrigendum dated 20.03.2023) dated 14.02.2022 (third S.C.N) were issued to M/s. Jia Lighting and Audio Equipment, 1964, Outram Lines, Kingsway Camp, Delhi- 110009 wherein they were called upon to show cause to the Commissioner of Customs, Custom House Mundra, having his office at Office of the Principal Commissioner of Customs, Custom House, 5B, Port User Building, Mundra Port, Mundra, Gujarat 370421 as to why: -

(i) Total assessable value of Rs 12,59,841/- (Rs. Twelve Lakh Fifty Nine Thousand Eight Hundred and Forty One Only) declared by them/assessed at the time of clearance of goods i.e., "Various Electrical Goods", as mentioned in ANNEXURE- A to above show cause notices, should not be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determined to Rs. 8,64,81,379/- (Rs. Eight Crore Sixty Four Lakh Eighty One Thousand Three Hundred and Seventy Nine only) as mentioned in ANNEXURE-A to abovementioned two show cause notices, under sub-section (1) of Section 14 of the Customs Act, 1962 and Rule 3 and 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Rule 10 of the of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, as applicable, for Bills of Entry, as mentioned in ANNEXURE-A to Show Cause Notices, Gen/Adj /ADC/146/2022-Adjn (read with corrigendum dated 11.02.2022) dated 09.02.2022 & Gen/AdJ/ADC/153/2022- Adjn (read with corrigendum dated 20.03.2023) dated 14.02.2022.

(ii) Differential Customs Duty amounting to Ra. 1,85,15,174/- (Rs. One Crore Eight Five Lakh Fifteen Thousand One Hundred and Seventy Four Only) on the goods imported l.e., Various Electrical Goods', under the Bills of Entry, valued (re-determined value) as detailed in ANNEXURE- A to Show Cause Notices, Gen/Adj/ADC/146/2022-Adjn (read with corrigendum dated 11.02.2022) dated 09.02.2022 Gen/Adj/ADC/153/2022-Adjn (read with corrigendum dated 20.03.2023) dated 14.02.2022, should not be demanded and recovered from them, under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

(iii) The goods i.c. Various Electrical Goods' Imported by them under the said Bills of Entry and further valued (re- determined value) as mentioned in ANNEXURE-A to Show Cause Notices, Gen/Adj/ADC/146/2022-Adjn (read with corrigendum dated 11.02.2022) dated 09.02.2022 & Gen/Adj/ ADC / 153 / 2022-Adjn (read with corrigendum dated 20.03.2023) dated 14.02.2022, should not be held liable for confiscation under Section 111(m) and 111(d) of the Customs Act, 1962.

(iv) Penalty should not be imposed upon them under Section 112(a) & (b) / 114A and 114AA of the Customs Act, 1962.

9. During the course of hearing appellant, inter alia, has taken various ground before us as per the appeal memo and also made following submissions during course of hearing:

9.1 The present case pertains to three Bills of Entry Nos, namely, BE No. 8507039 dated 10.02.2017, BE No. 8508322 dated 10.02.2017 and BE No. 8687768 Stated to be dated 27.02.2017 which are stated to be direct imports by the Appellant through Mundra Port. A Show Cause Notice dated 09.02.2022 read with Corrigendum dated 11.02.2022 has been issued with respect to BE No. 8507039 dated 10.02.2017 and BE No. 8508322 dated 10.02.2017 demanding differential Customs Duty to the tune of Rs. 1,65,5,318/- under Section 28 (4) of the Customs Act along with consequent interest and penalty. Further SCN dated 14.02.2022 has been issued with respect to BE No. 8687768 dated 27.02.2017 demanding differential Customs Duty to the tune of Rs. 19,79,856/- under Section 28 (4) of the Customs Act with consequent interest and penalty.

9.2 There is no independent inquiry/investigation with respect to goods imported vide aforesaid Bills of Entry. The instant show cause notices have been issued by stating, "in continuation of the Show Cause Notice No.GEN/ANJ/COMM/218/2021-Adjn-O/o Commr-Cus-Kandla dated 08.09.2021 (i.e. the first S.C.N) issued to M/S ZZEPL & Others, the assessable value & customs duty thereon of the abovementioned Bills of Entry are also liable to be rejected and re- determined as per Annexure - A to this Show cause Notice" (para 6 of SCN @page 113 & page 119 of Appeal Memo).

9.3 The Annexure A of both the show cause notices (@ page 117 & page 123 of the appeal memo) mentions in column 8, "Unit rate in USD per piece as per SCN No. GEN/ADJ/COMM/218/2021-Adjn-O/o Commr-Cus-Kandla dated 08.09.2021" and accordingly, differential duty payable has been calculated in last column of the aforesaid Annexures. It is thus, evident that value proposed in SCN dated 08.09.2021 (i.e. the first S.C.N) has been taken into consideration for rejecting the value declared in relation to subject goods in the instant case.

9.4 Both the abovementioned SCNs i.e, SCN dated 09.02.2022 (second S.C.N) read with Corrigendum dated 11.02.2022 and SCN 14.02.2022 (third S.C.N) have been adjudicated by the Ld. Commissioner ex parte vide the impugned OIO MUN-CUSTOM-000- COM-14-23-24 dated 20.09.2023 without affording any opportunity of Personal Hearing to the Appellant by applying the said value as proposed in the SCN dated 08.09.2021 i.e. the first S.C.N to the subject Bills of Entry and accordingly, have confirmed the entire demand along with interest and have also imposed penalty equal to the confirmed duty. In addition, penalty under Section 114AA has also been imposed.

9.5 That DRI stated to have developed an intelligence to the effect that one M/s Zip Zap Exim Pvt. Limited (hereinafter referred to as "M/s ZZEPL"), a trading unit in Special Economic Zone, Kandla (Gujarat) (hereinafter referred to as "KASEZ" for the sake of brevity) was importing Knitted Polyester Fabrics and various other Electrical goods and subsequently, clearing the same into DTA to various DTA importers including the Appellant by resorting to gross undervaluation. On the basis of said purported intelligence, an investigation was conducted and after completion of the same, a show cause notice dated 08.09.2021 was issued to Mis ZZEPL. & other DTA buyers including the Appellant proposing rejection of value declared by said SEZ. Unit and demanding differential duty along with interest from DTA buyers (including the appellant) with respect to respective imported goods. Said show cause notice dated 08.09.2021 (first S.C.N) is yet to be adjudicated though part hearing has taken place in said proceeding and the Appellant, inter alia, has requested for cross-examination of several persons whose statements have been relied upon in said SCN.

9.6 However, the learned Adjudicating Authority, in the instant case, has adopted the value proposed to be re-determined in the said SCN and confirmed the demand accordingly. It is submitted that determination of value proposed in the SCN is done under Section 28 (8) by passing the order which has yet not been done. Thus, value proposed in SCN dated 08.09.2021 (i.e. the first S.C.N) cannot be made basis to raise and confirm the demand in the present case. Thus, entire demand raised in the present case vide impugned show cause notices and confirmed vide impugned order on the basis of alleged value proposed in another show cause notice dated 08.09.2021, is arbitrary and bad in law.

9.7 Also, the demand raised in respect of BE No. 8507039 dated 10.02.2017 and BE No. 8508322 dated 10.02.2017 vide SCN dated 09.02.2022 read with Corrigendum dated 11.02.2022 is completely time barred being raised beyond the stipulated time period of five years under Section 28(4) of the Customs Act. Section 28 (4) provides to serve the Show Cause Notice within five years. As far as the aforesaid Bills of Entry are concerned, the date of issuance of corrigendum is to be treated as date of issuance of show cause notice. Thus, issuance itself of SCN in respect of aforesaid Bills of Entry is beyond five years. Five years gets ended on 09.02.2022, however, the date of issuance is 11.02.2022.

9.8 In any case, the entire demand has been raised by invoking extended period of limitation under Section 28(4) which is not sustainable. It is submitted that extended period is invokable in case of fraud, suppression, wilful mis-statement etc. with intention to evade payment of customs duty. There is nothing in the show cause notices issued in respect of subject Bills of Entry showing any of the aforesaid ingredients on the part of Appellant except raising demand stating the same to be in continuation of SCN dated 08.09.2021. The same is not permissible under law. It is pertinent to mention that every Bill of Entry is separately assessed. The subject bills of entry were duly assessed by the customs officers at the time of clearance in accordance with law and the same has attained finality as none of them have ever been challenged. Now, it was not open for the department to raise demand by undoing the assessment attained finality. It was submitted that the assessment made by the officers at the time of clearance is an appealable order unless the said assessment is challenged by way of appeal by appropriate forum; reassessment cannot be done, as has been in the instant case. Reliance in this regard is placed upon the judgment of the Hon'ble Supreme Court in the case of ITC Limited vs. Commissioner of Central Excise, Kolkata-IV reported in 2019 (368) ELT 216 (S.C.), Priya Blue Industries vs. C.C. reported 2004 (172) ELT 145 (SC) and C.C.E., Kanpur vs. Flock India Pvt. Ltd. reported as 2000 (120) ELT 285 (SC).

9.9 It was further submitted that for rejection of value declared by the Appellant in the instant case, the Adjudicating Authority has relied upon the Chartered Engineer's report pertaining to SCN dated 08.09.2021 without taking into consideration the value of contemporaneous import which is not sustainable. In the Para 15.6 of the OIO, it has been mentioned that the Chartered Engineer inspected the various electrical and electronics goods which were detained by DRI. But in the present case, the goods were not available for inspection as the goods were already cleared. Moreover, Chartered Engineer has no locus in the instant case to give opinion about value as opinion of Chartered Engineer is taken in case of old goods or second hand/refurbished machinery or like items in terms of Circular No. 25/2015 dated 15.10.2015 which is not the case here. In the instant case the Chartered Engineer was employed for valuation of goods, namely LED Christmas Light, Decorative Disco LED Focus Light, Torch, Dry batteries etc. By no stretch of imagination, it could be imagined that Chartered Engineer has expertise for valuation of these various electronic consumer goods.

9.10 There was reference in impugned order to the Chartered Engineer's Certificate dated 06.07.2018. It is pertinent to mention that said certificates do not belong to the goods which are subject matter of present case. The Chartered Engineer supposed to do valuation on the basis of technical analysis of equipment/machinery/goods but in this case, Chartered Engineer has been stated to have visited actual users place and cross checked the value by verbal enquiry but no details have been given of the persons from whom stated enquiry was done. In fact, value has been suggested by CE by internet search.

9.11 The learned Adjudicating Authority has also relied upon statements of the DTA importers as referred in SCN dated 08.09.2021 i.e the first S.C.N. Firstly, no statement has been recorded in the instant case. Said referred statements were in connection with purchases made from SEZ Unit. Secondly, said statements also have been retracted. It is submitted that retracted statements have no evidentiary value.

9.12 It was submitted that it is a settled law that valuation has to be done on the basis of contemporaneous data of imports. The Appellant while submitting reply in relation to SCN dated 08.09.2021 i.e the first S.C.N, has already submitted contemporaneous data showing that value declared by the Appellant with respect to subject goods is correct. Said data has been referred in the Appeal Memo also. It is a settled position in law that transaction value can be rejected only if there is evidence of contemporaneous import at higher price. There is catena of case laws where the Hon'ble Apex Court and Tribunals have held that allegation of undervaluation must be supported by price of contemporaneous imports. Reliance is placed upon the recent judgment dated 06.10.2023 of the Hon'ble Supreme Court in the case of Commissioner of Customs (Imports), Mumbai vs. Ganpati Overseas] 2023 (10) TMI (364)]. Thus, confirmation of demand in the instant case without considering the contemporaneous data is arbitrary and legally not sustainable.

9.13 In the impugned order, some electronic data retrieved from one of the DTA buyers pertaining to SCN dated 08.09.2021 i.e the first S.C.N has been referred in para 15.3 to support the allegation of undervaluation in the instant case. Firstly, none of such data has been retrieved in relation the subject consignments pertaining to the instant case. In any case, The electronic data retrieved from Mobile phones and e-mails in the manner as had been done in the in the case of investigation leading to issuance of SCN dated 08.09.2021, are not admissible as evidences. It is pertinent to mention that Data from mobile phone of Manoj Madan of M/ Daiwik Enterprises which has been referred in the impugned order, was retrieved at the Cyber Forensic Laboratory vide Panchama dated 24.01.2018. However, the said Panchama, if any drawn, has neither been relied upon as RUD in SCN dated 08.09.2021, nor in the present case. In fact, neither panchnama was drawn in this regard in the presence of Manoj Madan, nor Mr. Manoj Madan was present during data retrieval. Thus, said data retrieved from the electronic devices are uncertified and hence, cannot be relied upon as evidence. It also may be pertinent to note that Manoj Madan has retracted his statements tendered before the DRI officials. Hon'ble Apex Court has held in catena of cases that electronic evidences are admissible only with certificate U/s 65B (4) of the Indian Evidence Act is submitted. The Appellant relied upon decision of the Hon'ble Supreme Court in the case of Anvar P. V. Vs. P.K. Basheer & Others [2017 (352) ELT 416 (SC)]. The Appellant also relies upon the decision of CESTAT in the case of Jeen Bhavani International and Mahesh Chandra Sharma Karta Vs Commissioner Of Customs- Nhava Sheva-III [[2022 (8) TMI 237-CESTAT Mumbai).

In view of above, it was prayed that the impugned order may kindly be set aside with consequential relief.

- **Written Submissions of M/S. PRANSH ENTERPRISES and other:-** M/s. Pransh Enterprises also, inter alia, took similar grounds.

10. Appellants though raised various grounds rebutting the allegations but through the impugned order same were rejected and following operative order was passed by adjudicating authority:-

> *"39.11 reject the declared assessable value of Rs 12,59,841/- (Rs. Twelve Lakh Fifty Nine Thousand Eight Hundred and Forty One Only) for the goods mentioned in Table-A under Rule 12 of CVR, 2007 and order to re-determine the same as Rs. 8,64,81,379/- (Rs. Eight Crore Sixty Four Lakh Eighty One Thousand Three Hundred and Seventy Nine only) in terms of Rule 9 of the CVR, 2007 read with section 14 of Customs Act, 1962.*
>
> *39.2 I confirm the demand of Rs. 1,85,15,174/- (Rs. One Crore Eight Five Lakh Fifteen Thousand One Hundred and Seventy Four Only) for the goods mentioned in Table-A under section 28(4) of Customs Act, 1962 along with applicable interest under section 28AA of Customs Act, 1962.*
>
> *39.3 I order to confiscate the impugned goods mentioned in Table-A under Section 111(d) & 111(m) of the Customs Act 1962. Since, the subject goods are not physically available for confiscation, therefore, I refrain from imposing any redemption fine under Section 125 of the Customs Act, 1962.*
>
> *39.41 impose a Penalty of Rs. 1,85,15,174/- (Rs. One Crore Eight Five Lakh Fifteen Thousand One Hundred and Seventy Four Only)on M/s. Jia Lighting and Audio Equipment, 1964, Outram Lines, Kingsway Camp, Delhi-110009 under Section 114A of the Customs Act, 1962.*
>
> *39.5 I impose a Penalty of Rs. 30,00,000/- (Rupees Thirty lakhs only) on M/s. Jia Lighting and Audio Equipment, 1964, Outram Lines, Kingsway Camp, Delhi-110009 under Section 114AA of the Customs Act, 1962.*
>
> *This OIO is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force."*

11. Learned AR defended the findings and, inter alia emphasised that corrigendum did not change the character of the substantive contents of SCN and hence there was no time bar operating.

Findings:-

12. Considered. We find that the present case pertains to three Bills of Entry Nos, namely, BE No. 8507039 dated 10.02.2017, BE No. 8508322 dated 10.02.2017 and BE No. 8687768 dated 27.02.2017 which are direct

imports by the Appellant through Mundra Port. A Show Cause Notice dated 09.02.2022 read with Corrigendum dated 11.02.2022 (second S.C.N) has been issued with respect to BE No. 8507039 dated 10.02.2017 and BE No. 8508322 dated 10.02.2017 demanding differential Customs Duty to the tune of Rs. 1,65,5,318/- under Section 28 (4) of the Customs Act along with consequent interest and penalty. Further SCN dated 14.02.2022 (third S.C.N) has been issued with respect to BE No. 8687768 dated 27.02.2017 demanding differential Customs Duty to the tune of Rs. 19,79,856/- under Section 28 (4) of the Customs Act with consequent interest and penalty. There was no independent inquiry / investigation with respect to goods imported vides aforesaid Bills of Entry. The impugned show cause notices have been issued stating, *"in continuation of the Show Cause Notice No. GEN/ADJ/COMM218/2021-Adjin-O/o Commr-Cus-Kondla dated 08.09 2021* (the first S.C.N) *issued to M/S ZZEPL & Others, the assessable value & customs duty thereon of the abovementioned Bills of Entry are also liable to be rejected and re- determined as per Arnexure - A to this Show cause Notice"* .

12.1 Both the show cause notices mention in column 8, *"Unit rate in USD per piece as per SCN No. GEN/ADJ/COMM/218/2021-Adjn-O/o Commr-Cus-Kandla dated 08.09.2021*" and accordingly, differential duty payable has been calculated in last column of the aforesaid Annexures. It is thus, evident that value proposed in SCN dated 08.09.2021 (first S.C.N) has been taken into consideration for rejecting the value declared in relation to subject goods in the instant case.

12.2 Both the abovementioned SCNs i.e. SCN dated 09.02.2022 read with Corrigendum dated 11.02.2022 and SCN 14.02.2022 have been adjudicated by the Ld. Commissioner ex parte vide the impugned OIO MUN-CUSTOM-000- COM-14-23-24 dated 20.09.2023 without affording any opportunity of Personal Hearing to the Appellant by applying the said value as proposed in the SCN dated 08.09.2021 i.e. the first S.C.N to the subject Bills of Entry and accordingly, have confirmed the entire demand along with interest and has also imposed penalty equal to the confirmed duty. In addition, penalty under Section 114AA has also been imposed.

13. It is further found that DRI has been stated to have developed an intelligence to the effect that one M/s Zip Zap Exim Pvt. Limited (hereinafter referred to as "M/s ZZEPL"), a trading unit in Special Economic Zone, Kandla (Gujarat) (hereinafter referred to as "KASEZ" for the sake of brevity) was importing Knitted Polyester Fabrics and various other Electrical goods and subsequently, clearing the same into DTA to various DTA importers including the Appellant by resorting to gross undervaluation. On the basis of said purported intelligence, an investigation was conducted and after completion of the same, a show cause notice dated 08.09.2021 was issued to M/s ZZEPL & other DTA buyers including the Appellant proposing rejection of value declared by said SEZ Unit and demanding differential duty along with interest from DTA buyers (including the appellant) with respect to respective imported goods. Said show cause notice dated 08.09.2021 is yet to be adjudicated as per verification got done through Authorized Representative,

which has revealed that matter was still to be adjudicated in that show cause notice.

14. However, the learned Adjudicating Authority, in the instant case, has adopted the value proposed to be re-determined in the said SCN and confirmed the demand accordingly. Thus, determination of value proposed in the SCN is done under Section 28 (8) by depending on a show cause notice which has yet to be adjudicated. This is erroneous as value proposed in SCN dated 08.09.2021 the first S.C.N cannot be made basis to raise and confirm the demand in the present case without adjudication. Thus, entire demand confirmed in the present case vide impugned show cause notices on the basis of alleged value proposed in another show cause notice dated 08.09.2021, is bad in law. It is nothing but putting the cart before the horse. Perhaps it is a fit case, where common adjudicating authority for two jurisdictions should have been appointed by the C.B.I.C. An allegation which is yet to be decided in a show cause notice cannot be made evidentiary basis to sustain demand in another. A weak foundation of allegation alone in one matter cannot lead to strong edifice of sustainable evidence in another matter. "Debile fundamentum fallit opus" applies in the present case. An allegation which has not faced judicial scrutiny does not merit to be treated as authoritative evidence. We therefore, find that order cannot be sustained, same is set aside. Matter is remanded to be heard along with or after decision in show cause notice dated 08.09.2021 i.e. first S.C.N acquires sufficient evidentiary value and after due observance of natural justice in the impugned S.C.Ns and providing various relied upon materials to the

appellant and after considering on submissions including made on the point of limitation vis-a-vis of corrigendum by the appellant.

15. Impugned order is set aside and appeals are allowed by way of remand in above terms. Appeals allowed by remand.

(Pronounced in the open Court on 12.04.2024)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(C.L.MAHAR)
MEMBER (TECHNICAL)

Prachi